
United States Court of Appeals
For the Ninth Circuit

RUSSELL L. IRISH, dba
RUSSELL L. IRISH INVESTMENTS,
Petitioner,
vs.
SECURITIES AND EXCHANGE COMMISSION,
Respondent.

APPEAL FROM THE SECURITIES AND EXCHANGE
COMMISSION, WASHINGTON, D. C.

BRIEF FOR PETITIONER
(APPELLANTS)

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United States Court of Appeals
For the Ninth Circuit

RUSSELL L. IRISH, dba RUSSELL L. IRISH INVESTMENTS, <i>Petitioner,</i> vs. SECURITIES AND EXCHANGE COMMISSION, <i>Respondent.</i>	}	No. 20472
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APPEAL FROM THE SECURITIES AND EXCHANGE
COMMISSION, WASHINGTON, D.C.

BRIEF FOR PETITIONER
(APPELLANTS)

JURISDICTIONAL STATEMENT

Private proceedings were instituted on March 19, 1959, wherein Respondent issued an Order, pursuant to §§ 15(b) and 15A of the Securities Exchange Act of 1934 against Russell L. Irish, dba Russell L. Irish Investments, to determine whether Russell L. Irish and Russell Lawson Irish had wilfully violated § 17(a) of the Securities Act of 1933; § 10(b) of the Exchange Act, and Rule 17 CFR 240.10b-5 thereunder; and § 15(c) (1) of the Exchange Act, and Rule 17 CFR 240.15c1-2 thereunder. The purpose of the proceedings was to determine whether it was in the public interest to revoke or suspend the registration of Russell L. Irish, and whether to find Russell Lawson Irish a cause of any such order of revocation, suspension, or expulsion

(Tr. 2). The Court has jurisdiction on appeal from the Order of the Securities and Exchange Commission revoking the broker-dealer registration of Russell L. Irish and finding Russell Lawson Irish a cause of said Order, dated August 27, 1965 (Tr. 1421-1430). 5 USCA 1009.

STATEMENT OF THE CASE

The essential and most vital issue involved is whether Appellants were denied due process by the Respondent in the revocation of Appellant Russell L. Irish's broker-dealer license and finding Appellant Russell Lawson Irish as a cause thereof.

Appellants and Respondent, in their respective views of the evidence contained in the record, are at complete odds. Appellants claim arbitrary and dilatory acts of the Respondent denied the Appellants due process although Appellants had always urged the expeditious conclusion of these proceedings. Respondent contends the Appellants contributed to the prolongation of these proceedings. Appellants claim Respondent violated Respondent's own Rules of Practice and the Administrative Procedures Act. Additionally, Appellants contend the findings of the Respondent in its decision of August 27, 1965 (Tr. 1421-1430) are not supported by substantial evidence.

On March 19, 1959, Respondent ordered a private hearing held, said hearing being held in Spokane, Washington, September 21, 1959 through September 24, 1959; and a recommended decision was requested of the Hearing Examiner (Tr. 469).

Subsequent to that time by stipulation (Tr. 469) depositions were taken in this cause, one of Therese W. Benedict (Tr. 470-495) in San Francisco, California, on December 3, 1959, and filed December 24, 1959; deposition of Evan I. Evans (Tr. 496-516) was taken in Spokane, Washington, on June 20, 1960, and filed on July 6, 1960; deposition of Louis E. Alboucq (Tr. 517-527) was taken on February 24, 1961, in Spokane, Washington, and filed March 9, 1961; deposition of William A. Curry (Tr. 528-577) was taken on April 5, 1961, in New York City, and filed April 27, 1961; deposition of Daniel C. Raffaele (Tr. 578-592) was similarly taken on April 5, 1961, in New York City and filed on April 17, 1961.

Thereafter not until October 14, 1963, was there further activity by Respondent to close the subject hearing. At that time a motion to reconvene the hearing in these proceedings was filed by the Respondent (Tr. 1077-1081) which, under date of October 23, 1963, the Hearing Examiner denied and refused to certify such reconvening of the hearing to the Respondent (Tr. 1082-1083). The Hearing Examiner stated in part:

"The doctrine of laches on the part of the Division of Trading and Exchanges, now known as the Division of Trading and Markets, bars the Division from reviving these dormant proceedings which have been inactive for so much of the time since the hearing was closed on September 24, 1959.

"Furthermore, the concepts of fairness and due process require that proceedings such as these be prosecuted expeditiously and the Hearing Examiner is of the opinion that it will be unfair to the registrant and Russell Lawson Irish, the alleged 'cause', to resurrect this case after it has been in

such an inactive and dormant condition for so long.”

Appellants then filed, on November 4, 1963, a “Motion for Stay of Proceedings Permanently or in the Alternative, Motion to Dismiss Proceedings and Motion for Leave to Argue the Same Orally Before the Commission” (Tr. 1087-1099).

On November 12, 1963, Respondent filed its “Application for Review of Hearing Examiner’s Ruling of October 23, 1963 and Brief in Support Thereof and in Opposition to Respondent’s Motion for Permanent Stay of Proceedings on Dismissal” (Tr. 1100-1126). The findings and brief were filed and on April 3, 1964, the Hearing Examiner issued his Order recommending that these proceedings against Russell L. Irish and Russell Lawson Irish, the Appellants, be dismissed (Tr. 1375-1395). The Hearing Examiner said in part in his recommended decision:

“Based upon the entire record in these proceedings, the Hearing Examiner is firmly of the opinion that it will be unfair to revoke the registrant’s registration on the record that has become as stale as this and he finds that the public interest does not require it. If the registrant still continues his wrongful conduct, the Division of Trading and Markets can resort to the courts through the injunctive process or it can seek another order for proceedings from the Commission alleging new and later violations than those embodied in the extensively amended order under which these proceedings have been spasmodically kept alive for so long a time.”

Thereupon, under date of August 27, 1965, the Respondent issued its Order overruling the Hearing Ex-

aminer's recommended dismissal, and held the Appellants effected excessive trading in mutual fund shares at prices above offering prices, effected sales of mutual fund shares in amounts below break points, and further found that the delay in the proceedings had not prejudiced the rights of the Appellants and revoked the broker-dealer registration of the Appellant Russell L. Irish and found the Appellant Russell Lawson Irish as the cause of the revocation (Tr. 1421-1430).

It is noteworthy that the Respondent had conducted its investigation from 1941 through 1959 (Tr. 938-1048). Further, the record contains documents from 1943 through 1963 (Tr. 1046-1061).

Prior to March 19, 1959, the National Association of Securities Dealers, hereinafter referred to as "NASD", of which Appellant Russell L. Irish is a member, filed a complaint against Appellant Russell L. Irish, and under date of October 15, 1955, suspended said Appellant from the NASD for a period of 15 days, fined Appellant the sum of \$3,000 and costs of \$6,830.11. This decision and penalties were not appealed by the Appellant to the Respondent nor was the Appellant represented by counsel during those proceedings. The Respondent as is its custom and by its own regulations then investigated and instituted these present proceedings de novo.

It is interesting to note that in the event Appellant had chosen to appeal the penalties of the NASD, the Respondent could have ordered supplementary hearings enlarging upon those proceedings of the NASD, but the penalties imposed by the NASD could not have

been increased by the Respondent, contrary to the present situation the Appellants now find themselves in.

The action of the NASD covered much the same time period and material as the Respondent has in the present proceedings, for which the NASD has already penalized the Appellants.

SPECIFICATION OF ERROR

The Securities and Exchange Commission erred in revoking Appellant Russell L. Irish's registration as a broker-dealer and further erred in finding Appellant Russell Lawson Irish as the cause of that Order, as follows:

1. Appellants have been denied due process of law;
2. Respondent's Division of Trading and Markets has been guilty of laches in its handling of the proceedings herein;
3. Respondent's Division of Trading and Markets violated Respondent's Rules of Practice 201.16 (e) which states:

"Time for filing proposed findings and briefs prescribed by hearing officer. At the end of every hearing, the hearing officer shall, after consultation with the parties, prescribe the period within which such proposed findings and conclusions and supporting briefs are to be filed and shall direct such filing to be either simultaneous or successive, provided, however, that the period within which the first filing is to be made normally should be no more than 30 days, and shall not exceed 60 days, after the close of the hearing. If successive filings are directed the proposed findings and conclusions of the moving party shall be set forth in serially numbered paragraphs and any counter-statement of proposed findings and conclusions must, in addition to any other matter, indicate as to which para-

graphs of the moving party's proposals there is no dispute. Reply briefs may be filed by the moving party or, where simultaneous filings are directed, reply briefs may be filed by all parties, within the period prescribed therefor by the hearing officer."

4. Respondent failed to provide expeditious proceedings under Respondent's Rules of Practice 201.13, which states:

"(a) *Commission or hearing officer may extend, postpone or adjourn.* Except as otherwise provided by law, the Commission at any time, or the hearing officer at any time prior to the filing of his initial decision or, if no initial decision is to be filed, at any time prior to the closing of the record, for cause shown, may extend or shorten any time limits prescribed by these rules for filing any papers and may postpone or adjourn any hearing."

"(b) *Limitation on extensions.* In no event shall any extension of time for filing papers granted by hearing officer pursuant to this rule exceed a total of 30 days.

"(c) *Limitations on postponements and adjournments.* A hearing before a hearing officer shall begin at the time and place ordered by the Commission, provided that, within the limits provided by statute, the hearing officer may for good cause postpone the commencement of the hearing for not more than 30 days or change the place of hearing. Any convened hearing may be adjourned to such time and place as may be ordered by the Commission or by the hearing officer. *It is the policy of the Commission that such adjournment shall be for not more than 30 days and in no event shall the hearing officer order an adjournment for a period in excess of 45 days.*" (Emphasis ours.)

5. Respondent failed to provide expeditious proceedings in violation of 5 USCA 1009(e);

6. The findings of the Respondent as to the facts

are not supported by the evidence contained in the record of these proceedings.

7. Exhibits were improperly admitted as evidence that are not relevant to the proceedings (Tr. 22-30 as follows:

Hearing Examiner: The witness is referring to a page in this particular exhibit.

Q. Handing you what has been marked as Exhibit 3, would you determine if that is a copy of the ledger sheet of your accounts?

A. This is a bad copy, but I would say that the entries are correct; and I recognize the hand writing.

Q. And whose hand writing is that?

A. Well, it might be two.

Q. Could you recognize it?

A. Yes, the first part of it appears to be Patricia Herboth's hand writing.

Q. Is there any change in it?

A. No, there is no change.

Q. I am handing you Exhibit 4 and ask you to look at that; I'll have you look at them all.

A. Well, I recognize Mrs. Benedict's writing — Mrs. Benedict's account rather, and then, Evan I. Evans' account, and Doctor Milo Harris' account, and I recognize the hand writing on that, and Johnnie R. Hughes, and Jacob C. Keller's, George Wagnild, and August J. Pfeifer, and Robert F. and Jennie Brauer, and Fred H. Senkler.

Q. So these sheets, Mr. Irish, which are marked Exhibits 1 through 13, that you have just identified, appear to be accurate photo copies of the ledger sheets

of those customers for the periods which they cover?

A. Yes, sir.

Mr. Fegan: Does counsel wish to examine these?

Mr. Mortimer: Not at the moment.

Mr. Fegan: I would like to offer these sheets at this time as Commission's Exhibits 1 through 13. Now, counsel may examine the thirteen exhibits if they care to.

Hearing Examiner: Off the record.

(Discussion off the record).

Hearing Examiner: On the record.

Mr. Mortimer: One thing which we want on the record is a right to object to the admission in evidence of these records.

Hearing Examiner: You are objecting on the ground that they are photostats?

Mr. Mortimer: No, on the contexts as to the period of time they cover; we are not objecting that they are improper photostats.

Hearing Examiner: Then, your objection does not go as to the fact that these are photostats of the original ledger sheets in the Registrant's office?

Mr. Mortimer: No.

Hearing Examiner: Well, what is the basis of your objection, then?

Mr. Campbell: If the Court pleases, sir, these records come down from a period of 1943 to a recent date, and just what it is, I can't be sure; it's 1957 I believe, and there is a question in our mind that records older than six years are irrelevant here. A man is required to keep records under two rules, one for two years and one for

six years, and we have no objection to the admission of anything six years old or younger. The mere fact that he has kept them for a hundred years doesn't make them admissible at this time, and we would like to object to anything older than 1953.

Mr. Mortimer: Specifically older than September 10, 1953.

Hearing Examiner: What do you have to say about this objection, Mr. Fegan?

Mr. Fegan: First of all, I would point out that the order of the Commission in this case relates information furnished by the staff for a period from approximately May 1, 1943, to approximately October 31, 1958, as the period on it. I am referring you on it to Paragraph II (b) as a period during which the Registrant corporation employed the device of scheme, engaged in alleged illegal transactions. As I understand counsel's objection, it would be that the Commission erred in charging in the order a transaction more than six years from the current date.

Mr. Mortimer: That would be correct.

Hearing Examiner: Well, it seems to me that Mr. Miller, when he was on the stand, made some mention of a six year period. It strikes me a period starting with May 1, 1943, and running down to approximately October 31, 1958, is a period of fifteen years, and I can't see how that a period of time running fifteen years is relevant to this present proceedings.

Mr. Mortimer: That is what we are trying to find

out.

Mr. Fegan: Your Honor, as I understand the statute, there is no time limit placed upon which the Commission may examine into the illegal conduct of a broker. The mail fraud statute, which might apply to in three or more cases, insofar as I know, is by no means made applicable to activities of a registered broker dealer, and I believe that there is no limitation in the law as to the time beyond which the Commission may go in determining whether a broker engaged in illegal conduct. I will grant it the rule — bookkeeping requirement rather.

Hearing Examiner: Well, what is involved in such a long period of time? Mr. Campbell — Mr. Mortimer, would you read the document from which you have picked this six years as being starting point?

Mr. Mortimer: There are the rules that modify and explain Section XVII (a) of the Securities and Exchange Act of 1934.

Mr. Fegan: What is that section?

Mr. Mortimer: It is X-17-3 and is entitled "Records to be made by certain Exchange members, brokers, and dealers," and it starts out Paragraph (a) "Every member of the National Securities Exchange who transacts a business in securities directly with others and members of the National Securities Exchange and every broker or dealer who transacts a business in securities through the medium of any member and every broker or dealer registered pursuant to Section XV of the Securities and Exchange Act of

1934, as amended, shall make and keep current the following books and records relating to his business," and then, Your Honor, it goes on to state what must be kept. Under Section 1, it states for a period of six years, and that is Rule X-17 (a)-4, describes the length of time they must be kept, and this (a)-3 describes what record to be kept, and in (a)-3, it states and describes that blotters and ledgers and so forth shall be kept six years, that certain financial records shall be kept . . . preserved for three years for inspection. I have a photostatic copy here that we might introduce into the record, on which I have made notations.

Hearing Examiner: Judicial notice can be taken of that; I don't see any need of putting it in the record.

Now, what have you to say about the limitations which Mr. Mortimer has referred to, Mr. Fegan?

Mr. Fegan: Your Honor, I simply say that they are not applicable to this issue. He is referring to a regulation concerning how long a man is required to keep his records. *Mr. Irish is not charged here with violation of failing to keep records; he is charged with illegal conduct of churning accounts and charging people too much for securities. In connection with that, it is our contention that the Commission can go back to Mr. Irish's commencement in business; there is no statute of limitations.*

Hearing Examiner: *I can't agree with you on that.*

Mr. Fegan: Does the counsel have a statute of limitations they can cite?

Mr. Mortimer: I understand that there is no true civil statute of limitations as to the Commission's right to act against the broker dealers; there are, of course, statute of limitations growing out of customers' rights in civil law, but right now, I don't understand why the Securities Commission wants to question these very rules which are determinative of every hearing such as this. Why should a broker be burdened to go back fifteen or twenty years? To use Mr. Fegan's expression, they could go back to 1934, the day of the Act, and he would be responsible for his actions at that time, and also he would be responsible for proving that he was not guilty of the illegal conduct that they claim.

Hearing Examiner: I will do this; I would like to personally examine these ledger sheets, and I will hold their reception in abeyance until I have had an opportunity to do so.

May we pass on to something else?

Mr. Mortimer: May we go off the record?

Hearing Examiner: At this point, we will recess until two o'clock this afternoon.

(Whereupon, a recess was taken until 2:00 o'clock p.m.)

AFTER RECESS

Hearing Examiner: Let us come to order.

During the luncheon recess, I have examined the ledger sheets in these thirteen exhibits which the Com-

mission has offered in evidence, to some of which the Registrant, and I take it his son, have interposed objections. While the order, which instituted these proceedings and bears the date of March 19, 1959, says that the corporation's registration was withdrawn on April 18, 1945, and since the rule promulgated by the Commission, known as Rule X-17 A-4, indicates that broker dealers subject to Rule X-17 A-3 shall provide . . . preserve for not less than six years, the first two years in an easily accessible place, all record required to be made pursuant to Paragraph 1, 2, 3, 4, and 5 of Rule X-17 A-3, indicates that the Commission might desire to go into records which antedate a period more than six years prior the day this proceedings was instituted on March 19, 1955; nevertheless, Section II, Paragraph B of the said order of March 19, 1959, reads as follows: "B. During the period from approximately May 1, 1943, to approximately October 31, 1958, the corporation, the Registrant and Irish employed devices and schemes and artifices to defraud," and so forth. Since the start of this paragraph includes the corporation, *I feel that I must overrule the objections to the admissibility of these ledger sheets to which objection has been made. However, I wish to state I am impressed by the objections which have been raised to these ledger sheets which show transactions prior to six years which precede March 19, 1959, but due to the language employed in the order instituted in these proceedings, I feel that I should overrule the objection, and I now do so.* Division's Exhibits 1 through 13 inclusive are admitted in evidence, and

Messieurs Campbell and Mortimer are allowed an *exception* to this ruling on behalf of the Registrant and the Registrant's son.

Mr. Mortimer: We hereby except the ruling.

Hearing Examiner: I allowed you, but it is well enough for you to vocally except, Mr. Mortimer.

(Division's Exhibits Nos. 1 through 13 were received in evidence).

INTRODUCTION TO ARGUMENT

Appellants make claim that dilatory and neglectful handling of these private proceedings by the Respondent over an inordinate length of time is violative of due process. Respondent's own Hearing Examiner in his recommended decision of April 3, 1964, found it not in the *public interest* to revoke the broker-dealer registration of the Appellant and recommended that the proceedings be dismissed as the result of the staleness of the record and the delays in length of time the proceedings had been allotted (Tr. 1375-1395). Respondent had always allowed these hearings to be private (Tr. 2), not public, had never attempted to obtain an injunction against the alleged practices of the Appellants, had never instituted new proceedings against the Appellants, and had always allowed the Appellants to remain in business, conducting their business in a manner and mode always known to the Respondent because of the continuing surveillance by Respondent.

By Respondent's Order of August 27, 1965 (Tr. 1421-1430), Respondent summarily and permanently re-

voked the broker dealer registration of Appellant Russell L. Irish and found Appellant Russell Lawson Irish as the cause of the Order, effectively denying both Appellants their only livelihood. Said Order further summarily dismissed any allegations and claims of denial of due process, Respondent's failure to expeditiously conclude these hearings, and presumptions of Appellants' good conduct since the date of the hearings of September 1959. By so doing, Respondent violated its own Rules of Practice as well as the very intent of the Administrative Procedures Act, requiring that agency action shall not be unlawfully withheld or unreasonably delayed.

The severity of the Order, under the circumstances, is arbitrary, capricious, and an abuse of discretion, and has been promulgated without observance of required procedure and is unsupported by substantial evidence in this case.

The Respondent in its revocation order of August 27, 1965, inter alia, held that the Appellants were not entitled to any presumption of good conduct since the 1959 hearings when, in fact, Respondent acting through its identical individuals as a judging body under date of October 5, 1965, in review of an appeal by the Appellants herein of an order of the National Association of Securities Dealers, in Respondent's File No. 16-1A181, the Respondent reversed all penalties of the NASD against each of the Appellants and further in its opinion held "*Penalties imposed upon member excessive under all the circumstances, having due regard to the public interest, and reduced to censure, and assessments of*

costs reduced, and penalties and costs assessed against representative cancelled." (Emphasis ours.) The member is Appellant Russell L. Irish and the representative Appellant Russell Lawson Irish. The initial filing of the complaint in the NASD proceedings was October 16, 1962. The NASD hearings covered evidence and exhibits appertaining to transactions of the Appellants from at least 1956 to 1962, both time periods prior to the September, 1959 hearings and subsequent thereof. These NASD proceedings are separate and not a part of the 1955 NASD action which was closed at that time.

ARGUMENT

Petitioners Have Been Denied Due Process of Law

Private hearings were held in September, 1959 (Tr. 1-469), and the last deposition in this cause was held on April 5, 1961 (Tr. 578-592). Thereafter the Respondent's Division of Trading and Markets, the moving and prosecuting party herein, did nothing further to conclude these proceedings. The Respondents have now invoked the harshest penalties available to them, complete revocation of registration as a broker-dealer after allowing these proceedings to lie dormant for many years. The very essence of the conclusion of these proceedings and the resultant penalties have been an effective denial of due process to Russell L. Irish and Russell Lawson Irish, after this inordinate administrative delay, not contributed to by the Appellants. The affidavits on file well indicate the efforts on behalf of Appellants to conclude these proceedings until suddenly, arbitrarily,

and capriciously, the Respondent chose to close the proceedings (Tr. 1087-1099; 1127-1158).

The penalties meted out are so remote in time from the alleged violations as to constitute a taking of Appellant's property and rights without due process. The very essence of justice has been denied when proceedings lie dormant over an interminable period of time, and the prosecutor then elects at his caprice to obtain penalties on such long neglected charges. *Smith v. Illinois Bell Telephone Company*, 270 U.S. 587, 46 S. Ct. 407, 70 L. Ed. 747; *Deering-Milliken v. Johnston*, 295 F.2d 856; *Swift and Company v. U.S.*, 308 F.2d 849; *Amos Treat and Company v. Securities and Exchange Commission*, 306 F.2d 260, 113 U.S. App. D.C. 100; *Kessler v. FCC*, 326 F.2d 673, 117 U.S. App. D.C. 130.

It is well known that a person's business is a property right. *Truax v. Corrigan*, 1921, 22 S.Ct. 124, 257 U.S. 312, 66 L. Ed. 254; see also *Lasdon v. Hallihan*, 1941, 36 N.E.2d 227; *Morland Theaters Corporation v. Portland Moving Pictures Machine Operators Protective Union*, 12 P.2d 333, 140 Ore. 35.

In addition, due process of law guarantees every person his day in court and requires orderly proceedings in accordance with generally established rules not violative of fundamental rights. The Appellants have not been accorded orderly process and have been granted only inordinate delays. See *Rosenblum v. Rosenblum*, 42 N.Y.S.2d 626, 181 Misc. 78.

It must be noted that the Respondent's own hearing examiner in his decision of October 23, 1963, refused to reconvene these hearings upon the request of the Respondent, stated:

"Furthermore, the concept of fairness and due process require that proceedings such as these be prosecuted expeditiously and the hearing examiner is of the opinion that it will be unfair to the registrant (Appellant) and Russell Lawson Irish and the alleged 'cause' to resurrect this case after it has been in such inactive and dormant condition for so long." (Tr. 1082-1083.)

The hearing examiner in his Recommended Decision of April 13, 1964, further stated that:

"In view of the long delay and spasmodic prosecuting of this case, the hearing examiner is of the opinion that it cannot be seriously argued that that public interest requires the revocation of Mr. Irish's registration. In his judgment, these proceedings should be dismissed." (Tr. 1375-1395.)

Also see *Howard F. Hansell, Jr.*, 31 SEC. 393; *Herbert A. Mendell dba Herbert A. Mendell Company*, 31 SEC 491; and *Wesreb Oil Company*, (Securities Act Release No. 4647) September 30, 1963.

The Hearing Examiner's Recommended Decision stated that the record was silent as to how the Appellants have been conducting their business since then (the 1959 hearing). The Respondent in its decision reversing the Recommended Decision of the Hearing Examiner, summarily dismissed the contention that the Appellants were entitled to a presumption of good conduct.

It is difficult to conceive under any rationale of due process, how the Respondent in its Order of August 27, 1965 (Tr. 1421-1430), could hold the Appellants were not entitled to any presumption of good conduct. The Respondent callously and with cynical disregard

of the rights of the Appellants and with a zeal that hardly can be commended, ignored that presently pending before it at the very time of its Order of August 27, 1965 (Tr. 1421-1430), was an appeal by the Appellants from a decision of the National Association of Security Dealers which covered the time period of 1956 to 1962. Respondent by its Order of October 5, 1965 and through Respondent's *identical* commissioners that promulgated the August 27, 1965 Order, reviewed the disciplinary proceedings of the NASD, and held that the penalties imposed on the Appellants by the NASD were excessive under all the circumstances, having due regard to the "*public interest*," and found that there should be no penalties other than censure of Appellant Russell L. Irish and no penalties whatsoever on Appellant Russell Lawson Irish, and that fines or costs be dismissed except for the nominal sum of \$500 costs applied to Appellant Russell L. Irish. The Respondent further held that "under the circumstances, the sanctions and costs assessed with respect to . . . member's son (Russell Lawson Irish) must be cancelled."

Only five weeks after the Respondent's Order of revocation of August 27, 1965, the Respondent, by and through its same commissioners, held that the Appellants had not conducted themselves improperly. It is further interesting to note that the initial proceedings of the NASD dismissed those charges.

The Respondent has ignored in a manner grossly arbitrary and capricious judicial notice or information that would of itself deny the Respondent's finding of lack of presumption of good conduct.

If it were in the public interest to revoke the registration of Appellants Russell L. Irish and Russell Lawson Irish, the alleged cause of such revocation, why then were these proceedings always allowed to remain private by the Respondent, even after the Appellants had urged that they could be made public, at one of the many times the Appellants urged that these proceedings be closed? See letter of Appellants' counsel of August 28, 1962, to Respondent, which states in part:

"In addition, Mr. Irish has no objection to the proceedings being made public, in fact considers it a desirable feature, and requests that any proceedings hence forth be made public." (Tr. 1127-1158.)

as to cause complete denial of their opportunity to . . . engage in business as a broker-dealer, why, if the public interest was so jeopardized, why were so many years allowed to go by without seeking injunctive relief or at least making these hearings public in order to protect "the public interest"?

Respondent's Division of Trading and Markets Has Been Guilty of Laches in its Handling of the Proceedings Herein and Violative of the Constitutional Rights of the Appellants.

The Division of Trading and Markets in the past has attempted to assert that laches may not be asserted against governmental actions. Laches can be asserted against governmental action *which is void or not right*, although estoppel and laches cannot be asserted to defeat an existing right of the United States. Cases carefully distinguish circumstances under which the government has not received any rights or where its

actions are void and the rule is carefully so limited. *Guaranty Trust v. U. S.*, 304 U.S. 126, 135, 141 (1937); *Utah Power and Light v. U. S.*, 243 U.S. 389, 409 (1917); *Causey v. U. S.*, 240 U.S. 399, 402; *Chesapeake Canal Company v. U. S.*, 250 U.S., 123, 126 (1919). As in this case the United States has never obtained the right to violate its own Constitution. Unreasonable delay arising through a violation of due process is a valid limitation upon the acts of government in this case. *Smith v. Illinois Belle Telephone Company*, 270 U.S. 587; *Steen v. Los Angeles*, 31 Cal.2d 542, 190 P.2d 937.

The U. S. Supreme Court has not categorically rejected the imposition of the doctrine of laches against the government, even where the government is protecting the *public interest* if a violation of individual constitutional rights might be threatened. *Costello v. U. S.*, 365 U.S. 265, 281-4 (1960) (applying the law of *U. S. v. Ali*, 7 F.2d 728; *Johannessen v. U. S.*, 225 U.S. 227.)

The requirement of laches by the government is present. The case authority against holding laches on the part of the government applies in those cases when dilatory conduct of the party attempting to assert laches has caused delay. See *Major v. Shaver*, 187 F.2d 211; *Northern Pacific v. Boyd*, 220 U.S. 840, 842; *Smith v. Illinois Bell Telephone Company*, *supra*, the Supreme Court gave summary treatment of the government's assertion that new proceedings were required. In the instant case of the Appellants, Respondent attempts to assert the necessity of investigating new matter as an excuse for delaying pending proceedings.

The Respondent continued further investigations after the hearings of September, 1959, and never has again ever brought any further proceedings, whether private, public, or by injunctive claim, against the Appellants.

That Respondent's Division of Trading and Markets is in Violation of Respondent's Rules of Practice 201.16(e), and also in Failure to Provide Expedition Proceedings Under Respondent's Rules of Practice 201.13 and 5 USCA 1009(e).

Securities and Exchange Commission Rules 201.13 and 201.16 set time limits of 30 and 45 days for either continuation of hearings or filing of findings. Being valid rules of regulation by the Respondent, these are binding upon the Respondent. See *Accardi v. Shaughnessy*, 347 U.S. 260, 267; *Service v. Dulles*, 354 U.S. 363; *Sangamon Valley Television v. U.S.*, 269 F.2d 221; *Jefferson Amusement Company v. FCC*, 226 F.2d 277; *American Broadcasting v. FCC*, 179 F.2d 437; *Sheridan-Wyoming Coal v. Krug*, 172 F.2d 282.

The Respondent's Division of Trading and Markets cannot now assert some other construction of the Commission rules due to present circumstances which would change their clear intent. *U. S. v. Missouri-Pacific Railroad Company*, 278 U.S. 269. (The Court held that administrative usage must be uniform and of long standing in order to allow administrative construction to vary unambiguous regulatory provisions.)

The Respondent has failed to follow the Administrative Procedures Act relative to delay. Under 5 USCA 1009(e) the Courts have held that even if the general procedural rule of an agency is otherwise, and does not

provide a time limitation to guide the Hearing Examiner, statutes cited will control. *Deering-Milliken v. Johnson*, supra; see again 5 USCA 1009(e), in part set forth as follows:

“So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, and abusive of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of §1006 and 1007 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party and due account shall be taken of the rule of prejudicial error.”

The Supreme Court has rejected any narrow interpretation of the effect of the Administrative Procedures Act. *Riss and Company v. U. S.*, 341 U.S. 907; *Cates v. Haderlein*, 342 U.S. 804.

The policy of the Administrative Procedures Act has already been adopted by the Commission in the case of *In re Engineering Public Service*, 10 SEC 327. Its spirit of fairness was followed by the Commission even

earlier. *In re Consumer Power*, 6 SEC 444. Unreasonable delay easily gives rise to violation of due process of law as in the instant appeal. It is this high standard which is the policy of the Administrative Procedures Act. Swartz, "A Decade of Administrative Law: 1942-1951," 51 Mich. L. Rev. 775, 791-3 (1950).⁷ This is a part of Securities and Exchange jurisprudential traditional.

The recommended decision of the Hearing Examiner of April 3, 1964 (Tr. 1375-1395), in effect held the Respondent guilty of laches and failure to extend due process to the Appellants.

Section 201.13 of the Respondent's own rules states as follows:

"...It is the policy of the Commission that such adjournment shall be for not more than 30 days and in no event shall the Hearing Officer order an adjournment for a period in excess of 45 days."
(Emphasis ours.)

This very rule strikes the heart of this issue. The commission's staff proposed on October 14, 1963 (Tr. 1077-1081), to reconvene these proceedings which had been closed four years and one month after their adjournment. These proceedings were closed subject only to the taking of several depositions, of which the last was taken on April 5, 1961.

The instant proceedings covered a period from 1941 to the time of the 1959 hearing, and included records not required to be held by the very rules and regulations of the Securities and Exchange Commission. The records and exhibits, at this point of time, are rendered meaningless without the possibility of review of original

records, many of which were no longer available to the Appellants. Section 17(a) of the Securities and Exchange Act of 1934, supplemented by Rules X-17(a)-3 and X-17(a)-4), along with other definitive rules subject of this action, state that the Appellants are not required to hold blotters and ledgers, for example, for more than six years and that certain other financial records need be kept or preserved for only three years. No records are required to be held for more than six years. The scope of these proceedings was from 1941 to the date of the hearings.

One of the prime reasons for appointing the president's Conference on Administrative Procedure in 1953 was to study ways to eliminate unnecessary delay. The Conference recommended:

"That every agency consider unnecessary delay, expense and volume of records and adjudicatory proceedings to be detrimental to the public interest."

The Conference called this declaration the underlying philosophical declaration by the Conference. See *Davis on Administrative Law*, §8108, p. 550.

The federal courts have viewed the lack of due process because of administrative irregularities and delay in such proceedings with sufficient gravity that the courts have held there is no absolute requirement that a party even exhaust his administrative remedies before coming into court in such cases. *Adler v. U.S.*, Ct. of Cl., 146 F. Supp. 956.

Win or lose, protracted proceedings usually effectively destroy any business. See *FTC v. Evis Manufacturing Company*, (9th Circ.) 287 F.2d 831.

Securities and Exchange Regulation 201.19 further emphasizes the requirement of expeditious proceedings in broker-dealer revocations—another of the Respondent's regulations that Respondent also chose to bypass.

Reg. §201.19:

“In any proceeding pursuant to section 15(b) of the Securities Exchange Act of 1934 on the question of suspension of registration of a broker or dealer pending final determination whether such registration shall be revoked, the following time shall be applicable, unless otherwise ordered by the Commission, in lieu of the time limits prescribed by other provisions of these rules:

“(a) *Proposed Findings and Briefs.* Proposed findings and conclusions and briefs in support thereof may be filed within three days after the close of the hearing.

“(b) *Service of Record; Filing of Decision.* In Proceedings in which an initial decision by a hearing officer is to be prepared, the record in the proceedings shall, promptly after the time for filing proposed findings and conclusions and briefs in support thereof, be served by the Records Officer upon the hearing officer. The initial decision shall be filed with the secretary within five days after such service.

“(c) *Petition for Review.* Any petition for review must be filed within three days after receipt of the initial decision.

“(d) *Briefs.* Briefs in support of a petition for review, or in support of or in opposition to any portion of an initial decision, may be served and filed within five days after receipt of notice that the Commission has ordered review of the initial decision. Reply briefs may be served and filed within five days of receipt of an original brief.

“(e) No Review by the Commission on Its Own Initiative. The provisions of Rule 17(c) of these rules shall not be applicable to proceedings to which this rule applies.”

The Findings of Fact by the Respondent are not Supported by the Evidence.

The Respondent revived long-dormant hearings which very conclusion and appeal have caused Appellants extreme financial hardship and difficulty of preparation.

Stale records have caused these proceedings to be totally deprived of their vitality and rendered these matters to be substantially unfair to appellants so as to be procedurally irregular to the prejudice of the Appellants' appeal. The record of this cause on appeal indicates the highly technical methods of accounting used by the Respondent with a record that included testimony and exhibits appertaining in time as much as 18 years prior in time to the date of the 1959 hearings, well beyond the maximum three and six years required by the Respondent's own rules for holding books and records by the Appellants. Respondent's schedules submitted in this cause were so distorted as to give an untrue and unrealistic picture of trading activities and gains and losses.

Testimony shows that the Appellants' customers were aware of the investigation and the proceedings of Respondent. No customers ever launched a complaint nor had the Appellants lost any of their customers. These were well-informed investors not impressed by government allegations. The customers controlled and

used the Appellants as their agents for execution of their purchases and sales as dictated by the customer's own personal and business considerations. The Appellants never handled discretionary accounts; they were not registered as investment brokers and there never was any allegation or testimony of secret profits (Tr. 1-469). It was noted in *Behel Johnsen*, 26 SEC 163, a broker-dealer was churning *discretionary* accounts and obtaining *secret* profits by inducing customers to engage in excessive trading. It is well recognized that customers may initiate their own trading orders for their own purposes. *In re Thompson & McKinnon*, 1953, 35 SEC 451.

Contrary to the findings of Respondent, Appellants' testimony did disclose that the break-point costs were always disclosed to the customers and the Appellants even furnished confirmations, not required by law, which stated that the costs of any exchange of securities should always be weighed by the customer. Customers testified they were always advised of break points and even their attention was called to the statements on the confirmations (Tr. 1-469; 874-916; 917-918). Customers further testified they were always furnished a prospectus which was discussed, including the break points, at the time of purchase or conversion of funds. Appellants never obtained secret profits from their customers. Customers of Appellants testified to their knowledge of financial periodicals and their reliance upon their own judgments in the purchasing and sale of shares of mutual funds. The only instance of the failure to obtain a break point in the in-

stant cause was the result of an error caused by the mutual fund in its offices in New York City (Tr. 919-334; 935-937). There were no allegations before or subsequent to that time of any other such alleged violation.

The Appellants were not shown to have used manipulative, secret, or fraudulent practices nor did they fail to represent correctly and at all times all material information to the customers. There is no testimony that meets the test of reasonable proof that shows the Appellants failed to disclose all material circumstances and information fully and completely to their customers.

Rules of evidence require that wilful violations of fraud sections of the statutes and regulations must be supported by substantial evidence in the record, which is here notably lacking. See *R. H. Johnson and Company*, 198 F.2d 690, which included secret profits, from unsophisticated investors (elderly widow, disabled veteran, house painter with little education, steam fitter, etc.).

It is interesting that the Hearing Examiner in his Recommended Decision of April 3, 1964, noted that:

“When the hearings in these proceedings were closed on September 24, 1959, under the conditions hereinbefore mentioned, the Hearing Examiner had the impression that the Division’s case against the Respondents was, indeed, weak.

“...The long delay in bringing this case to the attention of the Hearing Examiner leaves him bereft of the opportunity of testing and passing upon the credibility of the various witnesses.” (Tr. 1375-1395.)

Although the Hearing Examiner held that there was substantial evidence to support a recommended decision, he paid note in his Recommended Decision of April 3, 1964, that the Registrants' (Appellants') counsel strongly objected to the admission of exhibits on the grounds that the records older than six years were irrelevant, citing Respondent's Rule 17(a)-3 and Rule 17(a)-4. The Hearing Examiner went on to state:

"While the Hearing Examiner had misgivings as to the soundness of his action which he expressed at the time (Tr. 29-30), he overruled the objections and admitted Division's exhibits 1 through 13, inclusive, in evidence. *These misgivings still exist.*" (Tr. 1373-1395.) (Emphasis ours.)

As a result, a substantial portion of the record of the September, 1959 hearing was evidence that was improperly admitted and was irrelevant by its very lack of relationship in time to the proceedings and scope of the hearing. It is obvious that a substantial portion of this case came from these improperly admitted records. Without this improperly admitted evidence, which is the greatest bulk of the evidence admitted in these proceedings, it cannot reasonably be argued by Respondent that there was substantial evidence, much less any real evidence, to support the findings and Order of the Respondent of August 27, 1965, revoking the Appellant's broker-dealer registration. The Hearing Examiner had already called the case of the Respondent "indeed weak," and this included the questionable admission of evidence to which the Hearing Examiner stated he had "misgivings" as to its admission, and that those "misgivings" still existed at the time of his Recom-

mended Decision of April 3, 1964.

During the proceedings subject of this appeal, one request for inspection of the Appellants' books was made on May 27, 1959. At that time there was no designation of what specific records and accounts were to be produced but only a "shot gun" request of inspection of records. No limitation was placed upon this request for inspection and compliance therefor was impossible. The action of the Respondent in the request for inspection, its manner of making and scope of demand, was arbitrary and unreasonable and incapable of conformance on the part of the Registrant (Tr. 29-40). See *SEC v. Bourbon Sales Corp.*, 47 Fed. Sup. 70. The Fourth Amendment to the Constitution is available to protect against too much indefiniteness or breadth in the things required to be particularly described. *SEC v. Vacuum Can Company*, 157 F.2d 530. This is just a further example of the denial of due process replete in these proceedings since their very inception.

It has been long held that statutes relating to production of books and records by parties to pending suits do not permit an unbridled investigation or "fishing expedition" into an adversary's books and records and statutes must recognize the constitutional declaration that the people shall be secure from unreasonable searches and seizures and to ignore such constitutional privileges is a denial of due process. *State ex rel St. Louis Union Trust Company v. Sartorus*, 171 S.W.2d 569; 351 Mo. 111.

Substantial portions of the evidence introduced by

the Respondent in this case covered periods of time remote from the proceedings making it impossible to have orderly proceedings and included much material so far beyond the necessity of the case as to be an arbitrary exercise of governmental power. See *Farmers Educational and Co-op Union v. Circuit Court of Charles Mix County*, 1950, 40 N.W.2d 402.

It is strongly urged that the greatest portion of the evidence adduced in these proceedings subject to this appeal are irrelevant and immaterial and not properly before the Respondent nor before this Court on appeal. Without this evidence, there can be little doubt that there was not substantial evidence to support the Respondent's Order.

CONCLUSION

Appellants are the victims of belated prosecution, unreasonable delay of administrative action, denial of due process, and the admission of evidence unrelated in time and irrelevant to the subject proceedings. The Respondent has flagrantly violated its own rules of practice and procedure that would ensure orderly and expeditious proceedings. Respondent has even gone to the extreme of holding that the Appellants were not entitled to a presumption of good conduct. Then Respondent through its identical commissioners five weeks later effectively held that the Appellants' behavior had in fact been good. The Appellants are entitled to judicial notice being taken of Respondent's decision of October 5, 1965, which held the Appellants blameless of misconduct in the transaction of their securities

business subsequent to the hearings of September, 1959.

The greatest volume of evidence in the subject proceedings is before the Respondent improperly, having been erroneously admitted by the Hearing Examiner, who in his own Recommended Decision of April 3, 1964, questioned the very soundness of his own ruling in ever having admitted this evidence which comprised the great bulk of the evidence before the Respondent. He described the case of Respondent as "weak" at best.

Public interest has been described by the Respondent as necessitating the revocation of the Appellants' registration and the deprivation of the Appellants' livelihood. This can only be construed as an arbitrary and capricious decision inasmuch as these proceedings and investigations were instituted in 1957, culminating with the hearing of 1959, always on a private basis. All during that time, if the "public interest" had so required, these proceedings would have been made public at the very least and, if the "public interest" was endangered, the Respondent would have attempted to seek an injunction against the Appellants, preventing them from engaging in alleged practices belatedly found by the Respondent to endanger the "public interest" to such extent as to cause revocation.

These proceedings are unique in the flagrant and continued abuse of the constitutional rights of the Appellants through the dilatory and questionable tactics of the Respondent, by the admission of evidence well beyond the requirements of the Respondent's own rules to have such information accessible for review and by the Respondent's callously holding in its opinion

that the Appellants are not to be accorded any presumption of good conduct (when before that same body was presently pending an appeal from the NASD, which five weeks later the identical Commissioners of the Respondent decided in favor of the Appellants, holding that they were not guilty of the charge of the NASD and that it was not in the "public interest" to sustain the penalties).

The repugnancy of the two decisions, one finding "public interest" required revocation, the other decision finding "public interest" required no penalties, disclose the capricious and arbitrary nature of the Respondent's Order of August 27, 1965.

As a result Appellants have been denied due process by the caprice of the Respondent in a manner which has not only violated the constitutional rights of the Appellants but violated the Respondent's own rules of practice and procedure, and violated the very language and intent of the Administrative Procedures Act. The Respondent has been dilatory, capricious, arbitrary, and unjust in its handling of the very economic existence of the Appellants. The Respondent by its Order of August 27, 1965, totally deprived the Appellants of their only means of livelihood and their sole vocation in deprivation of the constitutional rights of the Appellants herein.

The Order of the Securities and Exchange Commission, the Respondent herein, of August 27, 1965, revoking the broker-dealer registration of Russell L. Irish and finding Russell Lawson Irish as cause of that Order,

should be reversed and set aside.

Respectfully submitted,

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1100 IBM Building
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Appendix



1
APPENDIX

<i>Division's Exhibit No.</i>	<i>Description</i>	<i>Page No.</i>
1	Photocopies of ledger sheets of account of Harry A. Boger for years 1943 thru 1957.	593-603
2	Photocopies of ledger sheets of Account of Harry N. Boger for years 1947 thru 1957.	604-611
3	photocopies of ledger sheets of account of Maurice D. Prince for years 1950 thru 1956.	612-619
4	Photocopies of ledger sheets of account of Louis E. Alboucq for years 1950 thru 1956.	620-625
5	Photocopies of ledger sheets of account of Mrs. Therese W. Benedict for years 1949-1956.	626-632
6	Photocopies of ledger sheets of account of Mr. and Mrs. Evan I. Evans for years 1943 thru 1957.	633-651
7	Photocopies of ledger sheets of account of Dr. Milo Harris for years 1943 thru 1957.	652-663
8	Photocopies of ledger sheets of account of Johnnie R. Hughes for years 1951 thru 1956.	664-666
9	Photocopies of ledger sheets of account of Jacob C. Keller for years 1948 thru 1956.	667-673
10	Photocopies of ledger sheets of account of O. George Wagnild for years 1949 thru 1956.	674-682
11	Photocopies of ledger sheets of account of August I. Pfeifer for years 1944 thru 1955.	683-687

APPENDIX

<i>Division's Exhibit No.</i>	<i>Description</i>	<i>Page No.</i>
12	Photocopies of ledger sheets of account of Robert F. and Jennie Brauer for years 1943 thru 1957.	688-704
13	Photocopies of ledger sheets of account of Fred H. and Elizabeth A. Sinkler for years 1943 thru 1955.	705-712
14 to 17 (Inclusive)	Ledgers, Journals and Account Books of Russell L. Irish Investments admitted into evidence with the understanding that relevant portions thereof, if needed, could be photocopied, so that the entire records would not have to be kept.	
18	Copy of letter dated January 7, 1954 from R. L. Irish to Mrs. Therese W. Benedict advising that her Steel Shares and Republic Investors had been liquidated and moved over into the three National Securities Series.	713
19	Typewritten ledger sheets for the period June 30, 1945 thru July 31, 1953.	714-717
20	Letters dated January 23 and 29 and November 12, 1958 from Russell L. Irish to the Commission submitting information regarding the Future Planning Accounts of six customers.	718-721

APPENDIX

<i>Division's Exhibit No.</i>	<i>Description</i>	<i>Page No.</i>
21	Photocopies of ledger sheets entitled "Harry A. Boger — Records of Purchases and Sales of Securities through Russell L. Irish Investments" for period October 22, 1943 thru July 20, 1956.	722-726
22	Photocopies of ledger sheets entitled "Harry A. Boger, Results of Purchases and Sales of Mutual Fund Shares through Russell L. Irish Investments" for period October 22, 1943 thru July 20, 1956.	727-728
23	Photocopies of ledger sheets entitled "Harry N. Boger — Record of Purchases and Sales of Securities through Russell L. Irish Investments" for period June 4, 1947 thru September 4, 1956.	729-732
24	Photocopies of four pages of ledger sheets entitled "Harry N. Boger, Results of Purchases and Sales of Mutual Fund Shares through Russell L. Irish Investments" for dates June 4, 1947 thru September 4, 1956.	733-736
25	Photocopies of ledger sheets entitled "Maurice D. Prince — Record of Purchases and Sales of Securities through Russell L. Irish Investments" for period December 6, 1950 thru August 3, 1956.	737-738

APPENDIX

<i>Division's Exhibit No.</i>	<i>Description</i>	<i>Page No.</i>
26	Photocopy of ledger sheet entitled "Maurice D. Prince — Purchases and Sales of Mutual Fund Shares through Russell L. Irish Investments" for period December 6, 1950 thru July 31, 1956.	739
27	Photocopies of ledger sheets entitled "Louis E. Alboucq — Record of Purchases and Sales of Securities through Russell L. Irish Investments" for period January 27, 1950 thru October 2, 1956.	740-741
28	Photocopy of ledger sheet entitled "Louis E. Alboucq — Purchases and Sales of Mutual Fund Shares through Russell L. Irish Investments" for period December 27, 1950 thru October 2, 1956.	742
29	Photocopies of ledger sheets entitled "Mrs. Therese W. Benedict —Record of Purchases and Sales of Securities through Russell L. Irish Investments" for period May 4, 1949 thru October 31, 1956.	743-744
30	Photocopy of ledger sheet entitled "Mrs. Therese W. Benedict — Purchases and Sales of Mutual Fund Shares through Russell L. Irish Investments" for period May 4, 1949 thru July 11, 1956.	745'

APPENDIX

<i>Division's Exhibit No.</i>	<i>Description</i>	<i>Page No.</i>
31	Photocopies of ledger sheets entitled "Evan I. Evans — Record of Purchases and Sales of Securities through Russell L. Irish Investments" for period December 10, 1943 thru December 31, 1956.	746-755
32	Photocopies of ledger sheets entitled "Evan I. Evans — Purchases and Sales of Mutual Fund Shares through Russell L. Irish Investments" for period December 10, 1943 thru October 2, 1956.	756-759
33	Photocopies of ledger sheets entitled "Dr. Milo Harris — Record of Purchases & Sales of Securities through Russell L. Irish Investments" for period May 21, 1943 thru September 20, 1956.	760-765
34	Photocopies of ledger sheets entitled "Dr. Milo Harris — Purchases & Sales of Mutual Fund Shares through Russell L. Irish Investments" for period May 21, 1943 thru September 20, 1956,	766-767
35	Photocopies of ledger sheets entitled "Johnnie E. Hughes — Record of Purchases & Sales of Securities through Russell L. Irish Investments" for period October 24, 1951 thru October 2, 1956.	768-769

APPENDIX

<i>Division's Exhibit No.</i>	<i>Description</i>	<i>Page No.</i>
36	Photocopy of ledger sheet entitled "Johnnie R. Hughes — Results in Account as Handled from Purchases and Sales of Mutual Fund Shares through Russell L. Irish Investments" for period October 24, 1951 thru October 2, 1956.	770
37	Photocopies of ledger sheets entitled "Jacob C. Keller — Record of Purchases & Sales of Securities through Russell L. Irish Investments" for period September 20, 1948 thru October 2, 1956.	771-774
38	Photocopies of ledger sheets entitled "Jacob C. Keller — Results in Account as Handled from Purchases and Sales of Mutual Shares through Russell L. Irish Investments" for period September 30, 1948 thru October 2, 1956.	775-776
39	Photocopies of ledger sheets entitled "C. George Wagnild — Record of Purchases & Sales of Securities through Russell L. Irish Investments" for period October 5, 1949 thru October 2, 1956.	777-780
40	Photocopies of ledger sheets entitled "O. George Wagnild — Results in Account as Handled through Russell L. Irish Investments" for period October 5, 1949.	781-782

APPENDIX

<i>Division's Exhibit No.</i>	<i>Description</i>	<i>Page No.</i>
41	Photocopies of ledger sheets entitled "August 1. Pfeifer — Record of Purchases & Sales of Securities through Russell L. Irish Investments" for period February 1, 1944 thru October 2, 1956.	783-786
42	Photocopy of ledger sheet entitled "August 1. Pfeifer — Results in Account with Irish Firm" for period February 1, 1944 thru October 2, 1956.	787
43	Photocopies of ledger sheets entitled "Robert F. & Jennie Brauer — Record of Purchases & Sales of Securities through Russell L. Irish Investments" for period December 22, 1943 thru October 2, 1956.	788-795
44	Photocopies of ledger sheets entitled "Robert F. Brauer — Account as Handled from December 22, 1943 to December 31, 1956 through Russell L. Irish Investments."	796-798
45	Photocopies of ledger sheets entitled "Fred H. Senkler — Purchases and Sales of Mutual Fund Shares through Russell L. Irish Investments" for period October 26, 1943 thru September 28, 1954.	799-800

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<i>Division's Exhibit No.</i>	<i>Description</i>	<i>Page No.</i>
46	Customer's ledger sheets of Fred H. Senkler, for period October 26, 1943 thru January 1, 1955.	801-802
47	Photocopy of ledger sheet entitled "General Analysis Schedule Showing the Results Obtained by Certain Customers as a Result of Their Dealings in Mutual Fund Shares through Russell L. Irish Investments, Spokane, Washington."	803
48	Photocopies of ledger sheets entitled "Harry A. Boger — Account with Russell L. Irish Investments — Cash Receipts and Disbursements in his account with Russell L. Irish Investments" for period October 10, 1944 thru July 31, 1956 and "Harry A. Boger, Computation of Average Investment with Russell L. Irish Investments" for 1944, 1947, 1950, 1953 and 1956.	804-806
49	Photocopies of ledger sheets entitled "Harry N. Boger — Cash Receipts & Disbursements in his account with Russell L. Irish Investments" for June 4, 1947 thru October, 1956 and "Harry N. Boger — Computation of Average Investments in his account with Russell L. Irish Investments" for 1947, 1950, 1953 and 1956.	807-809

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<i>Division's Exhibit No.</i>	<i>Description</i>	<i>Page No.</i>
50	Photocopies of ledger sheets entitled "Maurice D. Prince — Record of Receipts and Disbursements through Account with Russell L. Irish Investments" for period December 7, 1950 thru September 26, 1956 and "Maurice D. Prince, December 6, 1950 to March 9, 1955, Computation of Average Investments in account with Russell L. Irish Investments"; same for March 9, 1955, thru December 31, 1956. ..	810-813
51	Photocopies of ledger sheets entitled "Louis E. Alboucq — Record of Cash Receipts & Disbursements from January 3, 1951 to September 30, 1954 through account with Russell L. Irish Investments" and "Louis E. Alboucq — Computation of Investments for December 30, 1950 thru September 30, 1954 in account with Russell L. Irish Investments"; same for December 3, 1950 thru December 31, 1956.	814-817
52	Photocopies of ledger sheets entitled "Mrs. Therese W. Benedict — Record of Cash Receipts and Disbursements in Account with Russell L. Irish Investments" for period May 5, 1949 thru November 11, 1956 and "Mrs. Therese W. Benedict — Computation of Average Investments in account with Russell L. Irish Investments" for 1949, 1952 and 1955.	818-819

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<i>Division's Exhibit No.</i>	<i>Description</i>	<i>Page No.</i>
53	Photocopies of ledger sheets entitled "Evan I. Evans — Cash Receipts and Disbursements, January 31, 1947 to September 30, 1954 in Account with Russell L. Irish Investments" and "Evan I. Evans — Computation of Average Investment in Account with Russell L. Irish Investments, January 31, 1947 to September 30, 1954."	820-822
54	Photocopies of ledger sheets entitled "Dr. Milo Harris — Record of Cash Receipts & Disbursements through Account with Russell L. Irish Investments" for period May 13, 1943 thru October 2, 1956 and "Dr. Milo Harris — Computation of Average Investments in Account with Russell L. Irish Investments" for 1943, 1946, 1949, 1952.	823-825
55	Photocopies of ledger sheets entitled "Johnnie R. Hughes — Record of Cash Receipts & Disbursements through Russell L. Irish Investments" for period October 24, 1951 thru October 4, 1956 and "Johnnie R. Hughes — Computation of Average Investments in Account with Russell L. Irish Investments" for 1951 and 1954.	826-827

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<i>Division's Exhibit No.</i>	<i>Description</i>	<i>Page No.</i>
56	Photocopies of ledger sheets entitled "Jacob C. Keller — Record of Receipts & Disbursements through Account with Russell L. Irish Investments" for period October 6, 1948 thru October 2, 1956 and "Jacob C. Keller — Computation of Average Investment in account with Russell L. Irish Investments" for 1948, 1951 and 1954.	828-830
57	Photocopies of ledger sheets entitled "O. George Wagnild — Record of Receipts & Disbursements through his Account with Russell L. Irish Investments" for period October 5, 1949 thru October 8, 1956, and ledger sheet entitled "O. George Wagnild — Computation of Turnover Rates." ..	831-833
58	Photocopies of ledger sheets entitled "August I. Pfeifer — Record of Cash Receipts and Disbursements in Account with Russell L. Irish Investment for March 18, 1948 to December 31, 1956" and "August I. Pfeifer, March 18, 1948 to December 31, 1956, Computation of Average Investments in Account with Russel L. Irish Investments."	834-835

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<i>Division's Exhibit No.</i>	<i>Description</i>	<i>Page No.</i>
59	Ledger sheet entitled "Mrs. Therese W. Benedict — Comparison of Results of Reinvestment Recommended for Tax Purposes and Increased Income as of December 31, 1954, 1955 and 1956."	836
60	Photocopies of ledger sheets taken from Division's Exhibits 14A, 14B and 17.	837-860
61	Schedules prepared September 23, 1959 by A. E. Wetzel and D. K. Halbakren from Daily Journal of Russell L. Irish Investments, and photocopies prepared from the General Ledger and Customers' Ledger of Russell L. Irish Investments.	861-872
62	Letter dated December 30, 1957 from Russell L. Irish to the Commission advising that photocopies of the customer's accounts left with Russell L. Irish by the Commission were found to be substantially correct.	873

*Registrant's
Exhibit No.*

- 1 (Reserved in case registrant decided to file an analysis of accounts.)

APPENDIX

<i>Division's Exhibit No.</i>	<i>Description</i>	<i>Page No.</i>
2	Schedules headed "Securities, No. of Shares, Data Acquired, Cost Price per Unit and also money, the date Sold, Sales Price in unit and money, given to customers by Russell L. Irish Investments annually." -----	874-916
3	Invoice from the Inland-Pacific Stamp Works dated November 11, 1955 to Russell L. Irish for seven on line stamp with attached copy confirmation. -----	917-918
4	8 Confirmations of trade, together with 8 copies of said confirmations dated February 18, 1954 from Distributors Group, Incorporated to Russell L. Irish Investments.	919-934
5	Copy of letter dated February 25, 1954 (unsigned) to Distributors Group, Inc. advising that a check for \$4,467.25 is enclosed which is in payment of the balance due on purchases itemized. -----	935-937
6	Telegram, dated August 25, 1959 to Mr. Irish from Miles Burgess.	

(Identification
only)

II. Documents in the Nature of Pleadings and Procedural Rulings Thereon

	<i>Page</i>
Application on Form 3-M for registration of broker or dealer filed with the Commission August 15, 1941 by Russell L. Irish.	938-948
Supplemental statement on Form 6-M filed September 6, 1941 to application filed August 15, 1941.	949-951
Supplemental statement on Form 6-M filed September 15, 1941 to application filed August 15, 1941.	952-953
Supplemental statement on Form 6-M filed September 30, 1941 to application filed August 15, 1941.	954-955
Supplemental statement on Form 6-M filed November 10, 1941 to application filed August 15, 1941.	956-957
Supplemental statement on Form 6-M filed March 7, 1942 by Russell L. Irish Investments, Corporation (formerly Russell L. Irish) to application filed August 15, 1941.	958-959
Application on Form 3-M for registration of broker or dealer filed April 13, 1942 by Russell L. Irish Investments, Corporation.	960-971
Supplemental statement on Form 6-M filed May 2, 1942 to application filed April 13, 1942. ..	972-973
Application on Form 3-M for registration of broker or dealer filed February 13, 1945 by Russell L. Irish, dba Russell L. Irish, Investments.	974-984
Supplemental statement on Form 6-M filed April 2, 1945 to application filed February 13, 1945.	985-986